

NOV 23 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of: )  
)  
Revision of the Commission's Part 64 )  
Requirements for the Filing of ) RM - 8354  
Cost Allocation Manuals by )  
Certain Local Exchange Carriers )

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**REPLY OF THE**  
**UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits this Reply to the various pleadings on USTA's Petition for Rulemaking. Most commenters supported the USTA rulemaking proposal, and provided record evidence of the costs carriers incur, the relatively small impact of nonregulated activities, and their continuing use of other Part 64 safeguards.

USTA's petition asked the Commission to retarget one part of a broader safeguard framework. It asked the Commission to consider whether it could adjust the burden of cost allocation manuals and related work, in light of six years' experience and the presence of the other regulatory safeguards that will continue to exist. If the Commission responds affirmatively, it will be able to achieve a net benefit for the public interest. Consideration of the petition is not simply a math calculation based on the threshold. The Commission can use its experience and judgment, in light of the record developed here, to make an informed choice about how best to deal with the cost allocation manual requirement. There is no support for

the lower thresholds identified in the Public Notice. Those lower thresholds would not offer the optimal benefit. Their benefits may be illusory in practice.

USTA requested that the Commission amend § 64.903(a) of its rules in only one place - to raise the threshold for filing cost allocation manuals, to cover carriers who have annual operating revenues of \$1 billion or more. As USTA explained, this would relieve a small group of carriers from the specific requirement of cost allocation manual filings, updates and audits, and it would better balance the burden and benefit of Federal regulation in this area.

As a preliminary note, USTA does not object to the suggestion by Bell Atlantic that the Commission should relieve all carriers from the burden of filing cost allocation manuals. Cost allocation manual burdens exist for the large carriers, too. If the Commission should elect to initiate a rulemaking to raise the threshold further, or to remove the cost allocation manual requirement entirely, USTA would support that proposed action. However, if the Commission elects not to provide relief for all carriers, it need not also decline to provide relief for some.

The record identifies the cost burden for the affected carriers. One of the affected carriers, Puerto Rico Telephone Company (PRTC), provided specific information about costs in its comments. PRTC explained that its compliance costs for this aspect of Part 64 were at least \$188,000 per year, with additional costs for its affiliate Puerto Rico Communications Company.<sup>1</sup> Yet, PRTC has few nonregulated

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<sup>1</sup> PRTC Comments at 3.

activities (only five), that involve in total only 6% of its business.<sup>2</sup> PRTC also states that until now there have been no comments on its cost allocation manual or revisions.<sup>3</sup> Thus, the public has not demonstrated any concern about PRTC's activities before the Commission. Other carriers that filed here supported the conclusions of PRTC that a change would serve the public interest.<sup>4</sup>

Nevada Bell filed comments in the proceeding that also included cost information. USTA believes that the threshold it set out in its own petition does (and should) cover Nevada Bell. USTA was unaware of the nature of the Nevada Bell operations at the time the USTA petition was filed. However, it appears from the facts set out in the record by Nevada Bell that Nevada Bell shares many of the factors that make the cost allocation manual burdensome for the other affected carriers.<sup>5</sup> Nevada Bell shows that its costs for cost allocation and related activities are disproportionately high - more than \$130,000 per year, or more than 50 cents per access line. While affiliated with Pacific Telesis, Nevada Bell is smaller than some of the companies identified by USTA, operates in only one state, Nevada, and in that state, doesn't serve its largest municipality.

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<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Comments of Lincoln Telephone at 1-2. See also Comments of Alltel at 2-4.

<sup>5</sup> Nevada Bell's nonregulated activities include only eight products, require only a small amount of its investment (.1%) and its expense (3.5%), and provide only a small percentage of its revenues. It, too, has had no comment on its cost allocation manual and amendments in the past. See Comments of Nevada Bell at 2-4.

The supporting comments explain how other Part 64 and accounting safeguards will remain available. PRTC's comments also pointed to the Commission's new rulemaking proceeding governing affiliate transactions,<sup>6</sup> and stated that this proceeding also is likely to increase its costs.<sup>7</sup> USTA notes that a new rule such as that proposed by the Commission in its new proceeding, Amendment of Parts 32 and 64 to Account for Transactions between Carriers and Their Nonregulated Affiliates, CC Docket No. 92-251, is likely to reduce the value of more aspects of a cost allocation manual by defining more specifically the basis for transactions between carriers and affiliates.

The only comments opposed to the USTA petition came from MCI and from the Ohio commission (PUC of Ohio).<sup>8</sup> MCI argued that the threshold was ambiguous and arbitrary,<sup>9</sup> but in reality, USTA's petition is no more ambiguous or

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<sup>6</sup> See Notice of Proposed Rulemaking, Amendment of Parts 32 and 64 to Account for Transactions between Carriers and Their Nonregulated Affiliates, CC Docket No. 92-251, released October 20, 1993.

<sup>7</sup> PRTC Comments at 4, note 3.

<sup>8</sup> Bell Atlantic's comments supported more complete relief from the cost allocation manual requirement. Bell Atlantic argues that the threshold is too low. (The record does support Bell Atlantic's argument more than it supports the alternative thresholds identified in the Public Notice that were not proposed by USTA.)

Bell Atlantic agreed with USTA's points that carriers will continue to comply with Part 64 (Bell Atlantic at 1), that the Commission retains other effective regulatory tools (Id. at 2), that carrier and Commission costs will be reduced or eliminated (Id. at 2), and that relief will permit a better use of resources (Id. at 2).

<sup>9</sup> MCI at 1.

arbitrary than the current rule, which also uses a dollar amount.<sup>10</sup> MCI also argued that there should be a more meaningful threshold, but offers no threshold proposal that works. Read carefully, MCI's comments would effectively remove any threshold, putting all carriers and the Commission into an unworkable ad hoc arrangement instead, based on individual carrier justifications and waivers.<sup>11</sup>

MCI suggests there has been no change in circumstances that merits change in the threshold, but it admits that there have been no comments on the manuals of the affected carriers, and its comments also suggest that carrier costs can be reduced or saved without unreasonable risk to ratepayers.<sup>12</sup> MCI's own comments show that the nonregulated activities of the affected carriers remain small in relation to their regulated business.<sup>13</sup> Together, all four affected carriers represent only 2.03% of all access lines, almost one full percentage point below the percentage of total access lines of the next largest exchange carrier organization. Growth in nonregulated revenues has been modest (or negative) for the affected companies. MCI's other claim - the absence of cost data - was addressed by other comments.

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<sup>10</sup> MCI is correct that the intent was to use the amount on a individual carrier basis.

<sup>11</sup> MCI at 2.

<sup>12</sup> MCI Comments at 5-6.

<sup>13</sup> MCI Comments at notes 4-5. These two MCI footnotes show how limited the USTA petition really is. MCI's footnotes also illustrate the need to assure that the scope of regulation does not expand simply as a result of inflationary activity. Other Commission rulemakings have recognized the need to adjust thresholds periodically to reflect Commission resources and experience, for example, in the area of expensing as opposed to capitalizing certain expenditures.

At bottom, MCI's comments evidence two overriding and oft-stated goals of MCI that are at odds with Commission policy and that are not unique to this proceeding. First, MCI will never change in its demand that there must be structural separation between a carrier and any nonregulated activities in which it engages, a position that reflects its resistance to the prevailing Computer III policy framework of the Commission, and a host of court cases that accept the rights of carriers to engage in both regulated and nonregulated activities.<sup>14</sup> Second, the only threshold MCI seems to accept is one based on its own conclusions, *i.e.*, that some group of entities must be restricted so long as MCI perceives them to have "continued control of bottleneck facilities." This is no threshold at all.<sup>15</sup>

The Ohio commission's comments recognize that the cost allocation manual requirement imposes proportionally greater costs on the affected carriers.<sup>16</sup> Its comments have a strong element of speculation - claiming that the carriers' nonregulated activities "will" at some point in the future represent a significant part of overall revenues,<sup>17</sup> and that the public should continue to have the "opportunity" to

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<sup>14</sup> See Computer III Remand Proceedings, CC Docket No. 90-368, Notice of Proposed Rulemaking, 5 FCC Rcd 5242 (1990); Report and Order, 5 FCC Rcd 7719 (1990); BOC and Tier 1 Carriers Nonstructural Safeguards, CC Docket No. 90-623, Notice of Proposed Rulemaking, 6 FCC Rcd 174 (1990); Report and Order, 6 FCC Rcd 7571 (1991). See also NARUC v. FCC, 737 F.2d 1095 (D.C. Cir. 1984)

<sup>15</sup> MCI at 7.

<sup>16</sup> PUC of Ohio Comments at 1 and 3.

<sup>17</sup> *Id.* at 2.

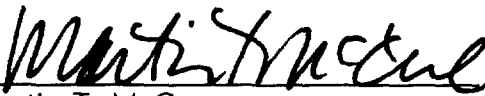
comment on cost allocation manuals.<sup>18</sup> Those claims also were articulated in 1986-87 when the rules were adopted. They may even have formed some basis for the initial rule, but neither the size of the carriers' activities nor the public interest as represented by actually-filed comments have materialized in the intervening years. Thus, these claims don't merit presumptive validity today.

The Commission has the opportunity to target its regulations here in ways that will deliver some benefit to interested carriers and their ratepayers without undue risk. Experience indicates that there is a more reasonable balance that can be achieved. Part 64 will continue to provide the structure and accounting safeguards that are sought by the Ohio commission comments and that USTA fully anticipates the Commission will continue to utilize effectively.<sup>19</sup>

USTA requests favorable action on the Petition, with a rulemaking that can be brought to a prompt conclusion.

Respectfully submitted,

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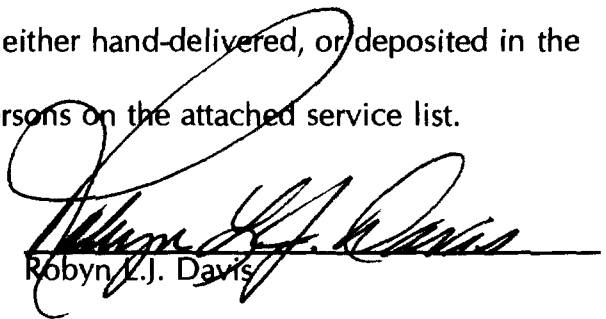
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<sup>18</sup> Id. at 2.

<sup>19</sup> PUC of Ohio Comments at 2.

**CERTIFICATE OF SERVICE**

I, Robyn L.J. Davis, do certify that on November 23, 1993 copies of the Reply of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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